



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

PIEDMONT REGIONAL OFFICE

4949A Cox Road, Glen Allen, Virginia 23060

(804) 527-5020 Fax (804) 527-5106

www.deq.virginia.gov

Matthew J. Strickler
Secretary of Natural Resources

David K. Paylor
Director

James J. Golden
Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO

**Virginia Electric and Power Company
VWPP Site No. 21-001090**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Virginia Electric and Power Company (hereinafter referred to as "Dominion"), regarding an existing farm pond located within the lease limits of the Hollyfield Solar Project located in King William County, Virginia, for the purpose of resolving certain violations of the State Water Control Law and applicable permit requirements and/or regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
2. "Construction Activity" means any clearing, grading or excavating resulting in land disturbance of equal to or great than one acre, or disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or great than one acre.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
5. "Discharge" means, when used without qualification, a discharge of a pollutant, or any addition of a pollutant or combination of pollutants, to state waters or waters of the contiguous zone or ocean other than a discharge from a vessel or other floating craft when being used as a means of transportation.
6. "Dominion" means Virginia Electric and Power Company, a company authorized to do business in Virginia. Dominion is a "person" within the meaning of Va. Code § 62.1-44.3.
7. "Dredging" means a form of excavation in which material is removed or relocated from beneath surface waters.
8. "Excavate" or "excavation" means ditching, dredging, or mechanized removal of earth, soil, or rock.
9. "Facility" means the Hollyfield Solar Project, located on Hollyfield Lane in King William County, Virginia
10. "Fill" means replacing portions of surface water with upland, or changing the bottom elevation of surface water for any purpose, by placement of any pollutant or material including but not limited to rock, sand, earth, and man-made materials and debris. 9 VAC 25-210-10.
11. "Impacts" means results caused by those activities specified in §62.1-44.15:20A of the Code of Virginia.
12. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
13. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
14. "Permit" or "Virginia Water Protection Permit" means an individual or general permit issued under Va. Code § 62.1-44.15:20 that authorizes activities otherwise unlawful under Va. Code § 62.1-44.5 or otherwise serves as the Commonwealth's certification under § 401 of the federal Clean Water Act (33 United States Code ("USC") § 1344.
15. "Pollutant" means any substance, radioactive material, or heat which causes or contributes to, or may cause or contribute to pollution. 9 VAC 25-210-10.
16. "Pollution" means such alteration of the physical, chemical or biological properties of any state waters as will or is likely to create a nuisance or render such waters: (i) harmful or detrimental or injurious to the public health, safety or welfare, or to the health of

animals, fish or aquatic life; (ii) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (iii) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses; provided that (a) an alteration of the physical, chemical, or biological Facility of state waters, or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution, but which, in combination with such alteration of or discharge or deposit to state waters by other owners is sufficient to cause pollution; (b) the discharge of untreated sewage by any owner into state waters; and (c) contributing to the contravention of standards of water quality duly established by the board, are "pollution." Va. Code § 62.1-44.3; 9 VAC 25-210-10.

17. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
18. "Regulations" means the Virginia Water Protection Permit Program Regulations, 9 VAC 25-210 *et seq.*
19. "Restoration" means the reestablishment of a wetland or other aquatic resource in an area where it previously existed. Wetland restoration means the reestablishment of wetland hydrology and vegetation in an area where a wetland previously existed. Stream restoration means the process of converting an unstable, altered, or degraded stream corridor, including adjacent areas and floodplains, to its natural condition.
20. "Significant alteration or degradation of existing wetland acreage or function" means human-induced activities that cause either a diminution of the areal extent of the existing wetland or cause a change in wetland community type resulting in the loss or more than minimal degradation of its existing ecological functions. 9 VAC 25-210-10.
21. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code. Article 2.2 (Va. Code §§ 62.1-44.15:20 through 62.1-44.15:23) of the State Water Control Law addresses the Virginia Water Resources and Wetlands Protection Program.
22. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3 and 9 VAC 25-210-10.
23. "Surface water" means all state waters that are not ground waters as defined in Va. Code § 62.1-255.
24. "Va. Code" means the Code of Virginia (1950), as amended.
25. "VAC" means the Virginia Administrative Code.
26. "Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

Wetlands generally include swamps, marshes, bogs, and similar areas. 9 VAC 25-210-10.

SECTION C: Findings of Fact and Conclusions of Law

1. Dominion owns and operates the Facility in King William County, Virginia. The property is subleased by Dominion from VA Solar Holdings. There is no VWPP permit associated with the Facility. The site of the existing farm pond located within the lease limits of the Facility has been designated as VWPP Site No. 21-001090.
2. On September 18, 2020, DEQ staff received a notification from Dominion regarding erosion associated with the outlet of an existing farm pond located within the lease limits of the Facility. Dominion noted that the pond was not part of the Facility's approved Stormwater Management Plan. Under the terms of the joint access agreement associated with the property, Dominion was under no obligation to maintain the farm pond; however, with permission from the property owner as well as the primary lease holder, Dominion volunteered to repair the failing embankment in an effort to prevent complete failure and associated impacts to the adjacent wetlands. Dominion notified DEQ of their intent to initiate repairs on October 12, 2020.
3. The majority of the pond repair work was completed between December 2020 and January 2021 and the project team was preparing for re-stabilization of the project area. On February 11, 2021, the contractor conducting the embankment repair activities, suspended work and left the site in order to undertake emergency inclement weather duties. Over the course of the repair work, the pond was being pumped down regularly to facilitate repairs; however, the pump was left off over the weekend of the release. The winter storm event that continued through the weekend caused the pond to refill and ultimately breach the embankment. On February 15, 2021, Dominion was notified by the Hollyfield Solar O&M provider that the embankment had failed.
4. On February 15, 16, and 19, 2021, DEQ staff received notifications from Dominion reporting un-permitted impacts to surface waters resulting from a 20-foot-wide collapse of the existing farm pond embankment. The failure resulted in a discharge of 1,200 cubic yards of sandy material into the adjacent wetlands that function as a floodplain to the Pamunkey River. DEQ staff subsequently conducted a VWP Program inspection at the Facility on February 22, 2021 to evaluate impacts resulting from the discharge.
5. Following issuance of the inspection report for the February 22, 2021 site inspection, DEQ and Dominion personnel held a meeting on March 5, 2021 to discuss the approach to remediation of the impacted area. A draft Corrective Action Plan was submitted to DEQ on April 19, 2021 and a follow up meeting with DEQ to discuss the contents of the draft was conducted on April 23, 2021.
6. On April 22, 2021, DEQ issued NOV No. 2103-001835 to Dominion with the following observations.

7. The NOV states that the during the February 22, 2021 inspection, DEQ staff observed approximately 0.8 acres of jurisdictional palustrine forested ("PFO") wetland was impacted by the accumulation of 1 to 18 inches of sediment deposition from an onsite dam failure. DEQ did not issue a VWP Permit authorizing the impacts to surface waters.

Va. Code § 62.1-44.15:20(A) states, "Except in compliance with an individual or general Virginia Water Protection Permit issued in accordance with this article, it shall be unlawful to: 1. Excavate in a wetland; 2. On or after October 1, 2001, conduct the following in a wetland: a. New activities to cause draining that significantly alters or degrades existing wetland acreage or function; b. Filling or dumping; c. Permanent flooding or impounding; or d. New activities that cause significant alteration or degradation of existing wetland acreage or functions; or 3. Alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses unless authorized by a certificate issued by the Board."
- 9 VAC 25-210-50 (A) states, "Except in compliance with a VWP permit, no person shall dredge, fill or discharge any pollutant into, or adjacent to surface waters, withdraw surface water, otherwise alter the physical, chemical or biological properties of surface waters and make them detrimental to the public health, or to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses; excavate in wetlands or on or after October 1, 2001, conduct the following activities in a wetland: 1. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions; 2. Filling or dumping; 3. Permanent flooding or impounding; or 4. New activities that cause significant alteration or
8. On April 26, 2021, Dominion representatives and DEQ enforcement staff discussed the NOV and proposed corrective action for the Site.
9. The final Corrective Action and Remediation Plan (CARP) was submitted on May 3, 2021 and DEQ approval was received on May 28, 2021. The approved CARP is incorporated by reference as part of Appendix A of this Consent Order.
10. Based on the foregoing information, the Board concludes that Dominion violated Va. Code § 62.1-44.15:20(A) and the associated regulation at 9 VAC 25-210-50(A).

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Dominion, and Dominion agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of **\$16,250** within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Dominion shall include its Federal Employer Identification Number with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department is required to refer collection of moneys due under this Order to the Department of Law, Dominion shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Dominion for good cause shown by Dominion, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Dominion admits the jurisdictional allegations, and agrees not to contest but does not admit to any findings of fact or conclusions of law in this Order.
4. Dominion consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Dominion declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Dominion to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the

Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Dominion shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Dominion shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Dominion shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Dominion. Nevertheless, Dominion agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after Dominion has completed all of the requirements of the Order;
 - b. Dominion petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or

- c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Dominion.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Dominion from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Dominion and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Dominion certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Dominion to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Dominion.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Dominion voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2021.

James Golden, Regional Director
Department of Environmental Quality

------(Remainder of Page Intentionally Blank)-----

Virginia Electric and Power Company voluntarily agrees to the issuance of this Order.

Date: 6/18/2021 By: Angela Tornabene
Virginia Electric and Power Company, Vice President

Commonwealth of Virginia
City/County of Richmond

The foregoing document was signed and acknowledged before me this 18th day of
June, 2021, by Amanda Tornabene who is
Vice-President of Virginia Electric and Power Company, on behalf of the
company.

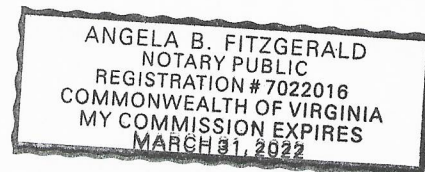
Angela B. Fitzgerald
Notary Public

7022016

Registration No.

My commission expires: 3/31/2022

Notary seal:



APPENDIX A SCHEDULE OF COMPLIANCE

1. **Corrective Action and Remediation Plan (CARP)**: This Consent Order incorporates by reference that certain plan and accompanying requirements entitled *Corrective Action and Remediation Plan: Hollyfield Solar Facility Farm Pond Embankment Breach*, King William County, Virginia / GAI Project R210148.02 (April 2021). Dominion shall complete the implementation requirements of the CARP in accordance with the schedule outlined in the approved Plan or alternate timeframe approved by DEQ. An Annual Monitoring Report shall be submitted to DEQ by December 31, 2021. The goals of the CARP shall be satisfied upon achievement of performance standards demonstrating conditions are comparable or better than pre-embankment breach conditions, as determined by DEQ.

2. **Submission of Information**: Submittals and other information required by this Consent Order shall be forwarded to:

Virginia Department of Environmental Quality
Piedmont Region Enforcement Office
4949A Cox Road
Glen Allen, Virginia 23060
Attn: Jeff Reynolds & Cara Witte

Jefferson.Reynolds@DEQ.Virginia.gov
Cara.Witte@DEQ.Virginia.gov